

The PRESIDING OFFICER. The Chair advises the Senator from Louisiana that the minority has 19 minutes 54 seconds remaining.

Mr. BREAUX. I thank the Chair.

#### AMTRAK REAUTHORIZATION

Mr. BREAUX. Mr. President, I take this time to comment on legislation that has been reported out of the Senate Commerce Committee reauthorizing the Amtrak rail system in this country and also instituting not just a reauthorization but as well an effort to try to bring about major reforms to the Amtrak passenger rail system in this country.

Let me say that the committee worked long and hard. The distinguished Presiding Officer is a member of the Senate Commerce Committee that worked on that legislation. It is apparent that I have expressed some public concerns about bringing this piece of legislation to the floor of the Senate under a unanimous consent arrangement to be handled in the Senate without the possibility of any amendments—indeed, without any discussion, just bring it up under a unanimous-consent procedure and then pass it and send it on to the other body, over to the House side. I have objected to that procedure because I think this, indeed, is a subject that needs to be discussed and debated in this Chamber.

Let me start by first saying that I very strongly support the concept of and the need for Amtrak reauthorization. The passenger rail system provides incredible economic assistance and transportation to industries and individuals in this country. Indeed, our entire rail system in this country is second to no other country. We can be proud of what Amtrak has brought in terms of passenger service to this country, as well as the freight and private carriers, and the good economic possibilities that they make happen every day by having this national transportation system of railroads in our country. All our industries and our businesses and our individual lives are touched every day by having such a fine rail system. I think by and large the various private companies do an outstanding job in maintaining their level of providing these services as well as doing their best to provide quality services in a safe manner so that everybody who uses the rail system can be assured of their safety.

The concern that I have—a concern we need to have this Senate body debate and discuss—is making sure that we do not do anything in this legislation to lessen the requirements of these private companies and, indeed, our public Amtrak system in the standards of safety that they must provide to the American public.

We all have witnessed this month a set of accidents around this country that I think are very disturbing, to say the least. Look at the headlines that have appeared in newspapers just in

the month of February. February 2, 1996: "Two Killed, 20 Hurt in California Train Derailment." On February 10, this year: "Three Die in New Jersey Transit Commuter Train Wreck." February 16, again, this month, the third such incident: "Brake Failure Causes Yet Another Train Wreck—9 Workers Injured, FBI Called In To Probe." And, of course, one that we are very familiar with in this area, on February 17: "MARC-Amtrak Trains Collide Killing 12." And then the fifth such accident, on February 22: "Colorado Train Derails, 2 Killed, Acid Spills."

Mr. President, I say to all of our colleague who may be listening and to the American public that these five major train accidents that occurred in a 1-month period are disturbing to me, disturbing to my colleagues and, I think, indeed disturbing to the American public. They want to know that the trains they ride on, the trains that carry the goods and services of this Nation are safe, they can be counted on and that they are dependable.

Again, I will point out that I have a great deal of respect for all of these private companies. They are attempting to do a good job. The concern I have right now and the reason I objected to bringing the Amtrak reauthorization legislation to this body without the ability of any discussion, under a unanimous consent agreement that prevents any ability to offer amendments to that legislation, is because I think there is a real possibility that some would like to further restrict individuals' rights to be compensated when rail accidents occur. When you have five in 1 month, Mr. President, I think we need to look at how these railroads are operating, how we can help them do a better job, and, yes, at the same time make sure that people who are injured by accidents where negligence was the cause of that accident are adequately compensated, and, yes, even to the point of providing punitive damages when gross negligence occurs and is the proven cause of that particular accident.

Now, the reason I bring up these concerns to the Senate today is because of the provisions that are in the bill that has already passed the House of Representatives and what they attempt to do to the American public in the area of safety and the ability to be compensated. Two things leap out that I am very concerned about, and some of these features are in the Senate bill.

First, there is a cap on punitive damages in the House-passed bill. In other words, if a railroad is found to be grossly negligent, almost to the point of saying: "We don't care what happens. If you get hit, we will pay the damages; we don't care." And I am not saying anybody fits in that category. It is very rare that punitive damages are awarded. But when they are awarded, it is to say to the defendant who has been grossly negligent, "We are going to penalize you so you don't do it again. Do not think it is easier to pay the damages than to fix the problem."

The House bill puts a cap on the punitive damages that can be awarded instead of letting a jury or a judge determine, after seeing the facts, what it should be. The Senate bill has a similar provision that puts a cap on punitive damages as well; in other words, restricting how much someone can be penalized by a judge and a jury for causing an accident where gross negligence has been proven beyond a doubt.

That I think is simply wrong. We should not be moving in that direction. We should allow punitive damages to be assessed on those rare occasions when they need to be, as a form of saying to a corporation or an individual, "Do not do that again. If you do, you are going to be severely penalized." That is an incentive to do a better job. That is an incentive to make things safer. That is an incentive to do more inspections and to make sure things work the way the American public has come to depend on their working.

The second thing I am concerned about is that there is a cap in the House-passed bill on the Amtrak reauthorization on limiting how much a person can recover for pain and suffering in an injury from a rail accident. How do we in Congress, sitting in Washington, DC, where we have not been out to interview a family or not heard testimony of those who have lost a member of their family or been disfigured or lost the ability to have any income in the future because of the injuries, how do we in Washington pick a number and say this is the maximum amount they can receive for pain and suffering as a result of the negligence of someone that has injured them?

How can we in Washington, who have never seen the injured people, never heard their testimony in a trial, never viewed that testimony firsthand, pick a number and say this is a fair number in every case that ever happens in America? How many of us in this body or the other body have interviewed any of the people injured in five train wrecks all over the country just this month?

How can we say that  $x$  amount of money is a cap that can never be exceeded? That is not a function of the U.S. Senate. Those numbers and those amounts for pain and suffering, when someone is severely injured, can best be decided, I think, by juries and by courts and by judges who, in a public forum, have listened to the witnesses, seen their injuries, heard expert testimony about how bad they are injured. Maybe for the rest of their lives they are going to suffer those same injuries. Let them decide what is an adequate amount for compensation.

The third concern that I have, which is probably the biggest concern, is something that I just do not understand and, quite frankly, I think was a terrible mistake on the part of the other body when they passed this legislation. It is called indemnification. I will just read it and then I will attempt to try to explain it, because we write

laws sometimes that nobody can ever understand unless they put it in English. Sometimes I think we write in foreign languages.

The House bill says:

INDEMNIFICATION OBLIGATIONS—

This is in title IV of the House-passed bill. It says:

Obligations of any party, however arising, including obligations arising under leases or contracts or pursuant to orders of an administrative agency, to indemnify against damages or liability for personal injury, death, or damage to property described in subsection (a), incurred after the date of the enactment of Amtrak Reform and Privatization Act of 1995, shall be enforceable, notwithstanding any other statutory or common law or public policy, or the nature of the conduct giving rise to the damages or liability.

If you read that the first time, your eyes glaze over. Certainly mine do. And I say, "What did he say?" It sounds convoluted and like it was written by a lawyer. Yes, it probably was.

What that section that is in the House-passed bill simply says—and one of my biggest fears is that the Senate may agree to it in a conference—it says as simply as I can put it, if a private railroad that owns the track and owns the signals and has not kept them up, has completely ignored conditions or put in the wrong signals or has their own train that is running on their own tracks, when the engineer is grossly negligent, who is maybe intoxicated or under the influence of drugs, is running their train, that if all those things occur, and it runs into an Amtrak train and, heaven forbid, kills passengers on that Amtrak train, that this section specifically says that the private railroads can have an indemnification agreement that absolves them of any responsibility, absolves them of any liability no matter how negligent they were, and they can shift that liability to Amtrak and say that the American taxpayer, who happens to fund Amtrak, is going to have to pay for the damages, pay for pain and suffering, pay for the damages to the community, the damages that are caused by that wreck, even though it was completely and totally the fault of the private railroad.

I suggest to my colleagues that it is not good public policy to allow a private industry to shift the responsibility and the liability for their negligence, no matter how bad it is, their gross negligence, to shift that responsibility to somebody else—in this case the American taxpayer—that it is not right. It is not good public policy. In fact, it is very bad public policy.

Under that section of the House-passed bill, when we go to conference, if it were somehow to be incorporated into the final package and passed into law, every private railroad would say, "Look, I have much less of an incentive to do the right thing because if we have an accident that involves an Amtrak train," which many of these that I just cited have, "I'm not going to be responsible."

I just think it makes no sense whatsoever from the standpoint of any standard of public policy to say that we should allow indemnification agreements to allow someone to shift their responsibility, even when they are grossly negligent, to some other party and say, "You take it. You take my responsibility. You take my responsibility for the pain, for the damages that my negligence caused," and particularly in this case when it is the Federal taxpayer, because we in this authorization are funding Amtrak.

When we fund Amtrak, the taxpayers are paying for Amtrak. So why should the taxpayer be paying for the gross negligence of some private industry when it is their fault that the accident occurred? I think we have to look at this very carefully. We have to reject it if it comes back. It is not part of the Senate bill, but it is part of the House-passed bill, along with the caps on punitive damages, along with the caps on pain and suffering.

If there ever was a time when we should be more careful about protecting the rights of injured people and more careful about ensuring mechanisms in our laws that provide incentives and inducements for both public bodies and public railroads and private railroads to do a better job, now is the time.

I cannot imagine someone standing up on the floor at this critical time and suggesting that what we ought to do is make it harder and more difficult for people who are injured in rail accidents to be justly compensated. I cannot imagine anybody at this critical time coming to the floor of the House or the Senate and suggesting that private railroads should be able to shirk their legal responsibility for gross negligence, if and when it occurs, onto the backs of the American taxpayer instead of standing up and saying, "Yes, we were responsible. Yes, we have to pay. Yes, we are going to correct this problem."

That is the issue, as simply as I can possibly state it, that we are going to be facing when this legislation comes to the floor. That is the reason that I have said time and again, do not bring this to the floor under a unanimous-consent agreement. Do not tie the hands of Members of Congress in our ability to talk about this. Do not prevent us from being able to offer amendments to correct these problems so that we do not make a very serious mistake with this legislation when it comes to the floor.

We should have the opportunity to improve it, to correct it, to amend it. And if we can work out that type of structure, I am looking forward to the debate with my colleagues in the Senate and, ultimately, hopefully, in a conference with the House.

Mr. President, I yield the floor.

Mr. DORGAN addressed the Chair.

The PRESIDING OFFICER. The Senator from North Dakota.

Mr. DORGAN. Mr. President, we are in morning business; is that correct?

The PRESIDING OFFICER. That is correct.

POPULISM

Mr. DORGAN. There is an old axiom in politics, when your adversaries are having a healthy feud, never walk across the street and get involved in it. I will not do that this morning. I am tempted to. However, I wanted to discuss, at least a bit, the issue of populism. I will not discuss so much the details of the feud that is going on in the Republican Party and in the primaries, but I do want to talk about the issue of populism.

What propelled me to do that today was Time magazine. There is a picture of Pat Buchanan in a hard hat and work shirt, and Lamar Alexander peeking over his shoulder in his plaid shirt, and then Bob DOLE and Steve Forbes behind them.

It says, "Grand Old Populists." So I am presuming, I guess, that GOP means "Grand Old Populists." I wanted to talk a little about this issue of populism. It is a fascinating concept to see these, as one of my colleagues in the Senate calls them, Grey Poupon-eating-, Jacuzzi-, country-club folks, wearing hard hats and work shirts and calling themselves populists.

Let us put all this in perspective. About 80 or 90 million years ago, the brontosaurus and triceratops and tyrannosaurus rex were running across southwestern North Dakota. They are digging some of them up, by the way. Then we skipped and fast forwarded, and it was about 5,000 years ago that we discovered there were people around, and about 2,000 years ago Jesus was alive. About 500 years ago Columbus was relatively lost and stumbled onto the southern part of this continent, and despite the fact that the folks who were living here greeted his boat, he was credited with discovering something or another.

And 200 years ago our country was born. Then 100 years ago we created planes, trains, and automobiles, roughly speaking. And 75 and 50 years ago it was the radio, then television. And 25 years ago we put a man on the Moon. Then 10 years ago the computer became something that you could have in your home and then later carry on your lap as you traveled. And now in the Republican Party "GOP" means "Grand Old Populists." And it is causing quite a stir, actually.

I noticed in this morning's paper one of the strategists, William Kristol, who speaks more often than most on politics from the conservative side, spoke of this issue.

He is speaking now about the turmoil that is going on in the Republican primaries. "William Kristol," according to the story this morning as a result of something he wrote recently—I guess this week—"sees no need for the Republican Establishment to succumb, in Pat Buchanan's phrase, to 'terminal panic.' A junior member of that Establishment, Kristol doesn't cower when